

FISCAL FOCUS

Brownfield Redevelopment Financing: Tax Increment Legislation and Use

**Prepared by
Patrick Morris, Legislative Analyst**

March 2018



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TO: Members of the House of Representatives

Economic development programs, those broadly aimed at increasing jobs, incomes, property values, and population in Michigan, have been of legislative interest for a number of years. One category of economic development program utilizes tax increment financing. In such an arrangement, an authority is created to promote redevelopment in an area and is able to capture the increase in property tax revenue resulting from the redevelopment. The captured revenue is then used to finance a project or further promote redevelopment in the area.

This publication summarizes the statute authorizing one of Michigan's main tax increment financing programs, the Brownfield Redevelopment Financing Act. The report provides a background on tax increment financing and environmental remediation policy, identifies and discusses important statutory changes to the act, describes the brownfield program's use in Michigan, and highlights the legislative debate surrounding the most recent revision to the act, the Transformational Brownfield Plan amendments.

Patrick Morris, Legislative Analyst, is the author of this report. Samuel Christensen, Fiscal Analyst, produced the maps that appear in the State Use Statistics section. Kathryn Bateson, Administrative Assistant, prepared the material for publication.

Please do not hesitate to call if you have questions about the information in this report.

A handwritten signature in black ink that reads "Mary Ann Cleary".

Mary Ann Cleary, Director

TABLE OF CONTENTS

| | |
|-----------------------------------------------------------------------------------------|----|
| Introduction | 1 |
| Background: Tax Increment Financing | 3 |
| Background: Brownfield Redevelopment in Federal and State Environmental Policy | 7 |
| Legislative History..... | 9 |
| State Use Statistics | 15 |

FIGURES

| | |
|--------------------------------------------------------------|----|
| 1 Tax Increment Financing..... | 3 |
| 2 PA 381 of 1996 – As Originally Enacted | 12 |
| 3 Timeline for Legislative Changes..... | 14 |
| 4 Number of Brownfield Redevelopment Authorities..... | 15 |
| 5 Number of Active Authorities | 16 |
| 6 Number of Active Projects..... | 17 |
| 7 Brownfield TIF Project Approvals, by Year | 18 |
| 8 PA 381 of 1996 – As Amended – As of December 1, 2017 | 22 |

APPENDICES

| | |
|------------------------------------------------------------------------|----|
| I Act Amendments..... | 27 |
| II Section Guide to PA 381 – As Amended – As of December 1, 2017 | 31 |

INTRODUCTION

With the recent enactment of Senate Bills 111 through 115 (the "Transformational Brownfield" program, 2017 Public Acts 46 through 50), attention focused on the program's enabling legislation: the Brownfield Redevelopment Financing Act (the "act"), PA 381 of 1996.

The act allowed for the creation of a new type of municipal authority—a Brownfield Redevelopment Authority (BRA)—that could capture tax increment revenues and use the funds to support planned environmental cleanup and remediation efforts. By collecting property tax revenues attributable to increases in a property's value, the authority could finance environmental cleanup. Passed in a time of increased attention on environmental policy, its goal was to support the revitalization of environmentally distressed areas.

During the recent legislative process to amend the law, there were numerous discussions about redevelopment across Michigan and the reuse of environmentally contaminated property, as well as debate about the fairness, use, and effectiveness of the tax increment finance (TIF) program.

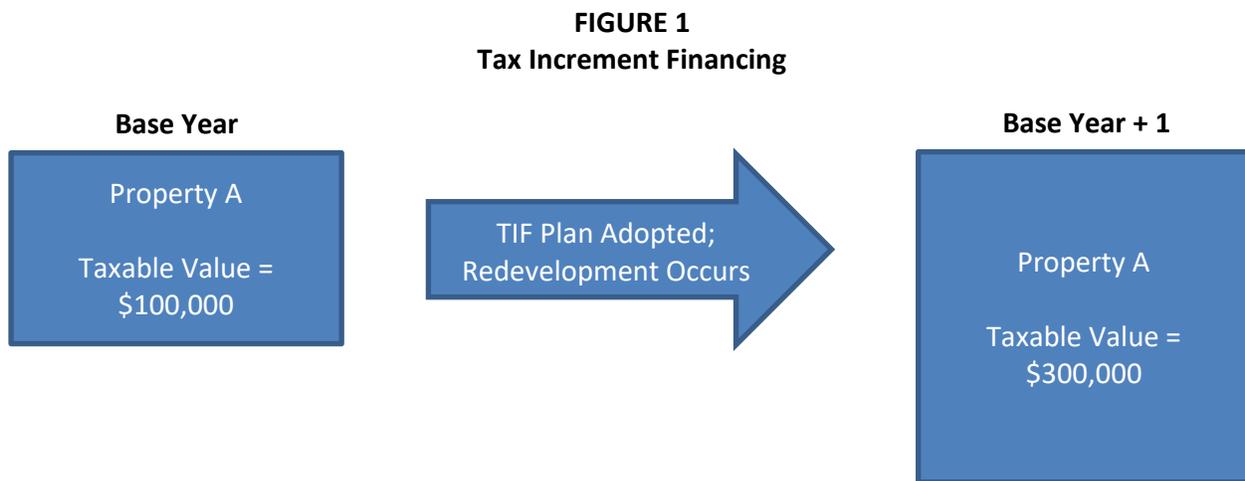
Building on this foundation, this publication serves to present an overview of some of the key components of Michigan's brownfield tax increment finance program by providing the following:

- (1) A primer on the brownfield TIF enabling legislation and subsequent legislative amendments;
and
- (2) A descriptive set of statistics about brownfield TIF use in Michigan.

This publication aims to summarize changes to Michigan's brownfield TIF statute and describe where and how the program is used across the state. This report does not address or audit the effectiveness of the brownfield TIF program (or TIF programs in general) nor assess the costs and benefits of TIF programs.

BACKGROUND: TAX INCREMENT FINANCING

Generally speaking, tax increment finance programs, authorized by state statute, allow a municipality to establish an authority to capture the growth in property tax revenues attributable to an increase in taxable value for an eligible property parcel or area. The tax increment revenues are then used by the authority to pay for certain eligible activities on the eligible property. See [Figure 1](#) below.¹



Tax increment finance authorities capture the tax increment revenues (TIR) attributable to the \$200,000 in captured taxable value (\$300,000 - \$100,000), and use the revenue for certain specific activities (e.g., constructing a parking deck on the designated property). In this example, if the property taxes available for capture total 40 mills, the authority captures \$8,000 in tax increment revenues. All other taxing jurisdictions (e.g., library, community college, municipality) are "locked" into receiving revenue from the Base Year, measured from when capture begins until the plan expires.

TIF is a commonly used tool to incentivize redevelopment within a municipality. Essentially, a taxing jurisdiction (a city, for instance) decides to forgo short-term property tax revenue growth to redevelop a particular area, with the goal of recouping that forgone revenue growth through long-term benefits. The expectation is that redevelopment of a particular area leads to additional

¹ For another example of tax increment financing, see "Survey of Economic Development Programs in Michigan, Third Edition." Citizens Research Council. February 2016. Pp 66-67.
https://crcmich.org/PUBLICAT/2010s/2016/economic_development_programs-2016.pdf

investment, increased economic activity, and the general reputation of a location as a desirable place to live and work.

In the *National Tax Journal*, Robert T. Greenbaum and Jim Landers write about TIF programs in general:

At its core, TIF assists development activities and subsidizes businesses in a TIF area using property or sales tax revenue generated in the TIF area to finance land acquisition, site preparation and cleanup, and infrastructure improvements that benefit private businesses that locate their operations on sites within the TIF area. Often, the financing arrangement involves a bond issue that provides upfront money to pay for the TIF programs. The debt service on the bonds is then paid from the tax revenue generated in the TIF.²

Greenbaum and Landers note that, according to national survey data, TIF is a particularly popular economic development incentive, and is used by about 55 percent of local governments responding to the survey, compared to tax abatements (47 percent) and grants (36 percent). Tax credits, low-cost loans, enterprise zones, and training support are used by half as many or fewer local governments.³

Tax increment financing may be desirable for many reasons. For local governments, it offers a way to incentivize redevelopment without a direct expenditure (as in an appropriation) or a loss of current tax revenue (as in a tax abatement). The tax revenue collected and used to improve an area is recouped through the future increases in property tax values and additional redevelopment that would not have happened without the TIF program. Greenbaum and Landers write of its popularity:

Because TIF only diverts the tax increment to TIF programs and leaves in place the base revenue financing existing local government and school district programs, **TIF has historically been advocated as a self-financing economic development program that does not reduce a local government's base revenues...** The programs that are alternatives to TIF either forego tax revenue (base revenue as well as revenue growth) or make expenditures from current tax revenue to subsidize and encourage development projects. In the case of TIF, the business continues to pay property taxes on its assessed value, part of which continue to flow to local government units. The same argument cannot be made for these other economic development programs.⁴ (emphasis added)

Finally, all TIF projects are time-limited; when capture expires, all ongoing property tax revenues flow to the respective taxing jurisdictions. This can be a significant gain for all taxing jurisdictions, for instance, if property tax values for the area have increased substantially during the window of capture.

PA 381 of 1996 was the fourth TIF authorizing legislation in Michigan, following the Downtown Development Authority Act (1975), the Tax Increment Finance Authority Act (1980), and the Local

² Greenbaum, Robert T. and Jim Landers. "The Tiff over TIF: A Review of the Literature Examining the Effectiveness of the Tax Increment Financing." *National Tax Journal*, September 2014, 67 (3). p 655.

³ Ibid. p 657.

⁴ Ibid. p 656.

Development Financing Act (1986). These acts were broadly aimed at correcting and preventing deterioration in business districts, preventing conditions of unemployment, encouraging neighborhood revitalization, and promoting economic growth.⁵

PA 381 was more narrowly tailored to promote the revitalization of environmentally distressed areas, referred to at the time as "brownfields," most affected by the state's history of manufacturing and industry. The act authorized the creation of a specific type of tax increment finance authority—a Brownfield Redevelopment Authority—to select applicable brownfield sites, develop plans, identify actions, and capture tax increment revenues to pay for environmental activities.

Under Michigan's various TIF programs, certain taxing jurisdictions have the ability to "opt out" of capture, and in other programs taxes levied under specific state laws or for specific purposes are fully exempt from capture. These provisions as related to the brownfield act will be discussed on the following pages.

⁵ Effective January 1, 2019, these acts will be repealed and recodified into a single act under Public Act 57 of 2018 (originally Senate Bill 393). PA 57 does not change the Brownfield Redevelopment Financing Act. For more information, see Legislative Analysis <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0393-B3811D8B.pdf>

BACKGROUND: BROWNFIELD REDEVELOPMENT IN FEDERAL AND STATE ENVIRONMENTAL POLICY

The Brownfield Redevelopment Financing Act was passed in a package of legislation related to environmental cleanup and redevelopment. The mid-1990s was a time of environmental focus in Michigan, as the state continued to experience two trends: the deindustrialization of urban centers and the rapid development of suburban fringes. The brownfield program focused on redeveloping the urban sites with the goal of preserving portions of the undeveloped land. Uniquely, the statute joined environmental policy with an identified funding source: tax increment financing. Previously, many contaminated sites remained undeveloped because of the prohibitive costs of environmental cleanup.

A report from Eastern Michigan University provides the following timeline of brownfield policy and environmental remediation efforts in general.⁶

- **1980:** Federal government enacts the Comprehensive Environmental Response, Compensation and Liability Act (commonly known as "superfund") to clean up uncontrolled or abandoned hazardous waste sites.
- **1988:** Michigan voters approve a brownfield redevelopment and remediation bond measure, the Environmental Protection Bond, including \$45 million for site redevelopment purposes.
- **1995:** Michigan enacts PA 71, amending the Natural Resources and Environmental Protection Act (NREPA), to limit liability of those who purchase contaminated property, allow flexibility in cleanup standards based on intended land use, and create baseline environmental standards.⁷
- **1996:** Michigan enacts PA 381, allowing municipalities to create BRAs to issue bonds and collect tax increment revenues to pay for certain environmental activities.

Importantly, regarding the mid-1990s legislation and associated policies, the report notes: "Through both administrative and legislative action, Michigan **cast aside the singular federal focus on cleanup of toxic sites** and the imposition of strict liabilities placed on property owners. The new Michigan approach was **specifically targeted to encourage redevelopment**, relying on a combination of private initiative and public support..." (emphasis added)

⁶ Jones, Robert A. and William F. Welsh. "Michigan Brownfield Redevelopment Innovation: Two Decades of Success." Department of Geography and Geology, Eastern Michigan University. September 2010. <http://www.miseagrant.umich.edu/wp-content/blogs.dir/1/files/2018/02/10-201-EMU-Final-Report.pdf>

⁷ "Restructure 'Polluter Pay.'" House Fiscal Agency, 3-30-95. <http://www.legislature.mi.gov/documents/1995-1996/billanalysis/House/pdf/1995-HLA-4596-A.pdf>

It is important to note that at this time, Michigan unlinked the definition and mission of its brownfield programs from related federal programming. This is still true today, as different states use differing standards for the term "brownfield" and its associated programming. The United States Environmental Protection Agency currently defines "brownfield," found in Public Law 107-118 of 2002, as: "a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."⁸ By contrast, Act 381 has no statutory definition of "brownfield."

⁸ "Overview of the Brownfields Program." United States Environmental Protection Agency, updated 7-17-17. <https://www.epa.gov/brownfields/overview-brownfields-program>

LEGISLATIVE HISTORY

PA 381 of 1996: Legislative History

The changes enacted by 1995 PA 71 removed many barriers to redevelopment of brownfield sites. The act, however, created a pool of "orphan sites" or "orphan shares" of sites for which no party could be found responsible for the contamination (or the responsible party no longer existed).⁹ Thus, PA 381 served to treat these remaining brownfield sites as similar to other economic development districts and provided the tax increment financing mechanism for environmental activities at these sites. Its goal, as identified in the bill's introduction, was "to promote the revitalization of environmentally distressed areas."

Generally speaking, PA 381 provided that a municipality could create a BRA that would implement a brownfield plan in accordance with statutory requirements. The act's provisions, related to eligible property and eligible activity, were focused on environmental remediation and cleanup. The act also included a sunset on the ability of a plan to capture taxes levied for school operating purposes (defined as both the taxes levied by a local school district for operating purposes and the taxes levied under the State Education Tax Act).

PA 381 was passed in a package of legislation that also did the following:

- Created various state funds, grants, and loan programs to support brownfield redevelopment activities (PAs 380 and 383)
- Amended the Single Business Tax Act to provide for brownfield redevelopment tax credits (PA 382)
- Created a cleanup redevelopment fund with revenue from unclaimed bottle deposits (PA 384)

A generalized overview of the originally enacted act follows.

Authority

The act allowed a municipality (city, village, township, or county) to create a Brownfield Redevelopment Authority. The municipality was required to do so through a resolution, subject to statutory requirements for notifications and public hearings. The municipality was also required to designate the boundaries of the zone in which the BRA would operate and establish a BRA board. The BRA board was subject to both the Open Meetings Act and Freedom of Information Act.

BRA Responsibilities

The BRA was responsible for creating bylaws and could expend funds, enter into contracts, own or lease property and any devices necessary for purposes of the act, accept grants and donations,

⁹ "Brownfield Redevelopment." Senate Fiscal Agency, 7-10-96. <https://www.legislature.mi.gov/documents/1995-1996/billanalysis/Senate/pdf/1995-SFA-0919-A.pdf>

incur general administrative and operating costs, study and make plans for redevelopment, invest money, make loans, and borrow money and issue notes under the Municipal Finance Act.

Financing Sources

A BRA could establish a "local site remediation revolving fund" to pay for the costs of eligible activities related to redevelopment. A BRA had the option of seeding the fund with specific amounts of tax capture. In addition to the local fund, a BRA could be financed by any contributions, revenue from properties, tax increment revenues, proceeds of tax increment bonds and notes, proceeds of revenue bonds and notes, and any other money allowed.

Plan Location and Scope of Activities

A brownfield plan was required to be on an "eligible property" in the designated zone of the BRA. An eligible property was defined as a "facility," which, generally speaking, meant a place with some level of hazardous substance in excess of allowable amounts. Adjacent and contiguous parcels were also eligible. The eligible activities were defined as baseline environmental assessments, due care activities, and additional response activities. Generally speaking, these were environmental studies and assessments of current contamination levels and actions that allowed the land to be in compliance with the environmental standards for its intended use.

The act did allow for an expanded set of activities, but only when using a specific funding source. Section 12 of the act allowed an authority to issue negotiable revenue bonds or notes. Proceeds from the issuance of these bonds or notes could be used to finance "the costs of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing property in connection with an authorized activity under this act."

Brownfield Plan Requirements

A BRA could implement a brownfield plan to apply to parcels within the designated zone. The plan had to include:

- A description of the costs of the plan to be paid for with tax increment revenues, and a summary of the eligible activities.
- An estimate of the captured taxable value and tax increment revenues for each year of the plan.
- Payment method for costs of the plan, including any advances.
- The maximum amount of note or bonded indebtedness, if applicable.
- The duration of the brownfield plan: the lesser of 30 years or when the total amount of tax increment revenues is equal to all costs of the plan.
- An estimate of the plan's impact on the revenues of all taxing jurisdictions in which the property is located.
- Estimates of the number of persons residing on the property who will be displaced, and a general plan for these persons.
- A description of the use of the local site remediation revolving fund.
- Any other relevant material.

Tax increment revenues associated with a plan could be used only for the associated eligible property.

Local Governing Body Approval

The brownfield plan required approval from the local governing body. That body was required to hold hearings and notify other taxing jurisdictions according to statute. The body would first have to find public purpose in the plan, and then assess whether the financing, costs, and amount of captured taxable value were reasonable.

Limitations on Captured Taxes

A BRA could not capture taxes levied for the repayment of debt and those already being captured by a TIF authority. A BRA could only capture school operating taxes if the plan was approved by the Department of Environmental Quality (DEQ) by January 1, 2001. Essentially, the act provided a five-year window to approve plans to capture school operating taxes. A BRA also had to account for school taxes separately from local taxes.

DEQ Approval

Before beginning the plan, the BRA had to seek approval from the DEQ. The BRA had to submit the brownfield plan and additional information about the specific site and the actions to be conducted. DEQ reviewed the brownfield plan package and issued an unconditional approval, conditional approval, or request for more information. DEQ decisions were final, and DEQ was required to submit a report to the Legislature of all plans it approved.

Transfer of Funds and Reporting

Municipal and county treasurers were required to transmit tax increment revenues to the BRA within 30 days of collection. The BRA spent according to the brownfield plan. BRAs were required to submit a report to the State Tax Commission and the governing body containing financial information; the Tax Commission was required to compile the information and prepare a report for the Legislature.

FIGURE 2
PA 381 of 1996 – As Originally Enacted

"An act... to promote the revitalization of environmentally distressed areas..."

Who

- (1) Municipality establishes a brownfield redevelopment authority (BRA), its board and its zones, and hears input, per statute.
- (2) Authority implements a brownfield plan, per requirements.
- (3) Plan must be approved by BRA and local governing body.
- (4) Authority submits work plan or remedial action plan to DEQ for review purposes.
- (5) If approved, treasurers submit revenue to authority within 30 days of collection; authority spends per brownfield plan.

Eligible Property

"Facility" – any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements [for residential clean up criteria] has been released, deposited, disposed of, or otherwise comes to be located; and adjacent or contiguous parcels if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of the facility in a brownfield plan.

Tax Increment Revenue Sources

- Ad valorem and specific property tax increment revenues, except those levied for debt and those already captured by TIF.
- Property taxes levied for school operating purposes only if consistent with a plan approved by DEQ by January 1, 2001.

Eligible Activities

- Baseline environmental assessment activities
- Due care activities
- Additional response activities

Generally speaking, all the above activities are environmentally related and include evaluations that assess existing conditions and establish a means to distinguish existing contamination from a new release, actions that are necessary to meet compliance with requirements under NREPA, and activities that allow for the intended use of the facility and protect public health and safety.

Legislative Action Since 1996

PA 381 has been amended by 23 separate acts over its 21-year existence. Major updates to the act occurred in 2000, 2007, and 2012. The sunset on plan approval to capture taxes levied for school operating purposes was extended three times (in 2000, 2002, and 2007), then eliminated in 2012. However, Michigan Strategic Fund (MSF) and/or DEQ approval is generally still required in order to capture taxes levied for school operating purposes. Of all amendments to the act, the sections of the act that were most commonly amended pertain to definitions, brownfield plans and plan provisions, and the work plan approval process.

In addition to extending and removing the deadline to capture school taxes, the major updates to the act generally had the same impact: they broadened the properties to which a brownfield plan could apply, broadened the scope of eligible activities that a BRA could pay for with tax increment revenues, and, most recently, broadened the sources of tax increment revenue available for capture. This can be illustrated with a few examples.

Public Act 145 of 2000 authorized a BRA established in a "qualified local governmental unit" (QLGU; defined in companion legislation and also known as a "Core Community") to use "blighted" and "functionally obsolete" property as eligible property. That is, there was no longer a requirement that a brownfield plan apply to contaminated property; the program could be used on property that met the statutory definition of "blighted" or "functionally obsolete." It also gave those BRAs the ability to use tax increment revenues to pay for additional eligible activities including "infrastructure improvements," "demolition of structures," "lead or asbestos abatement," and "site preparation." That is, there was no longer the limitation that tax increment revenue be used only for direct environmental remediation; revenue could be used for other activities (the definition of "infrastructure improvements" included over 15 potential improvements). In conjunction, the act required approval from the Michigan Economic Growth Authority (MEGA) and a written agreement with the developer in order to capture and use school taxes for these activities.¹⁰

Public Act 204 of 2007 authorized all BRAs—not just those in qualified local governmental units—to use "blighted" and "functionally obsolete" property as eligible property and to use tax increment revenues to pay for "demolition of structures" and "lead or asbestos abatement," and required the same agreement and approval.

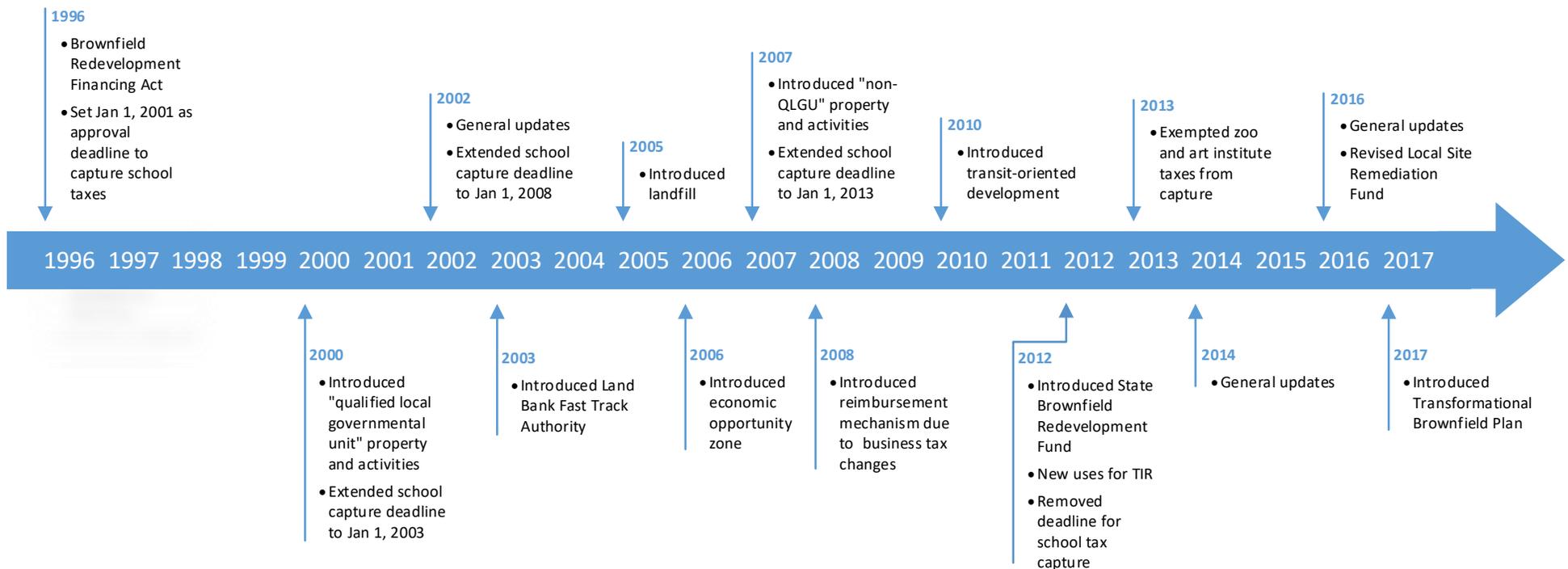
Public Act 502 of 2012 removed the approval deadline to capture school taxes and required that all statewide brownfield plans remit a specific amount of captured tax increment revenue to the state for deposit in the State Brownfield Redevelopment Fund, to be used as a statewide financing source. PA 502 also replaced the role of MEGA in the brownfield process with the Michigan Strategic Fund (MSF).

Other public acts have added additional, smaller allowable eligible properties, and additional, allowable activities. Eligible activities are generally now classified as either "department specific activities" (Department of Environmental Quality; meaning environmental activities) or "non-environmental activities" (meaning those activities requiring MSF approval, if using school taxes).

¹⁰ For a flow chart that details the plan approval process, see Michigan Office of the Auditor General, "Performance Audit of the Brownfield Redevelopment Financing Program," June 2011. Pp 20-21. Available online at: https://audgen.michigan.gov/finalpdfs/10_11/r271042011.pdf

See the timeline below for a brief overview of the legislative changes. For a more detailed summary of the act's amendments, please see the [Appendices](#).

FIGURE 3

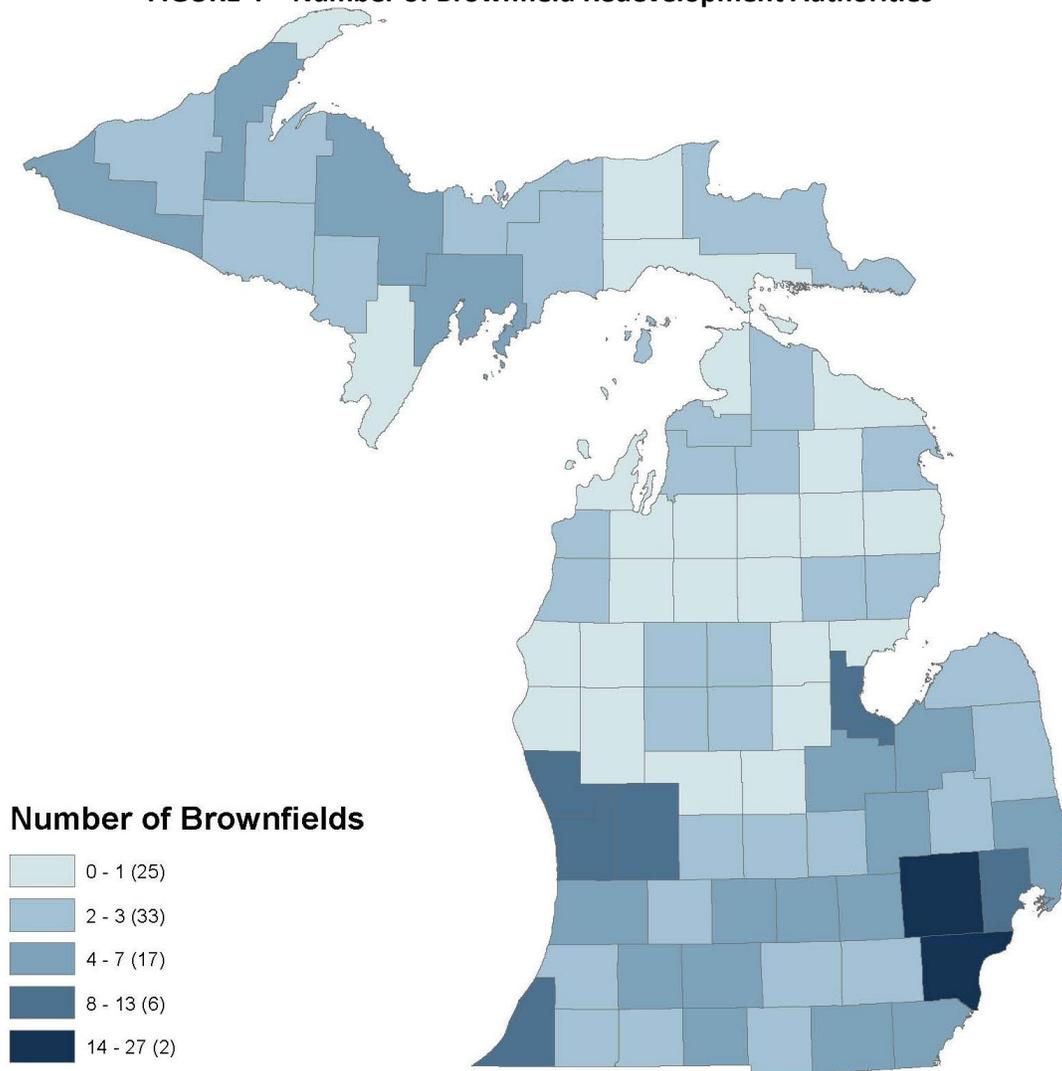


STATE USE STATISTICS

Use and Activities of Brownfield Redevelopment Authorities

According to the most recent legislative report compiled by the Michigan Strategic Fund, there are 295 total brownfield authorities in Michigan.¹¹ Figure 4 shows the location of these authorities in Michigan.

FIGURE 4 – Number of Brownfield Redevelopment Authorities

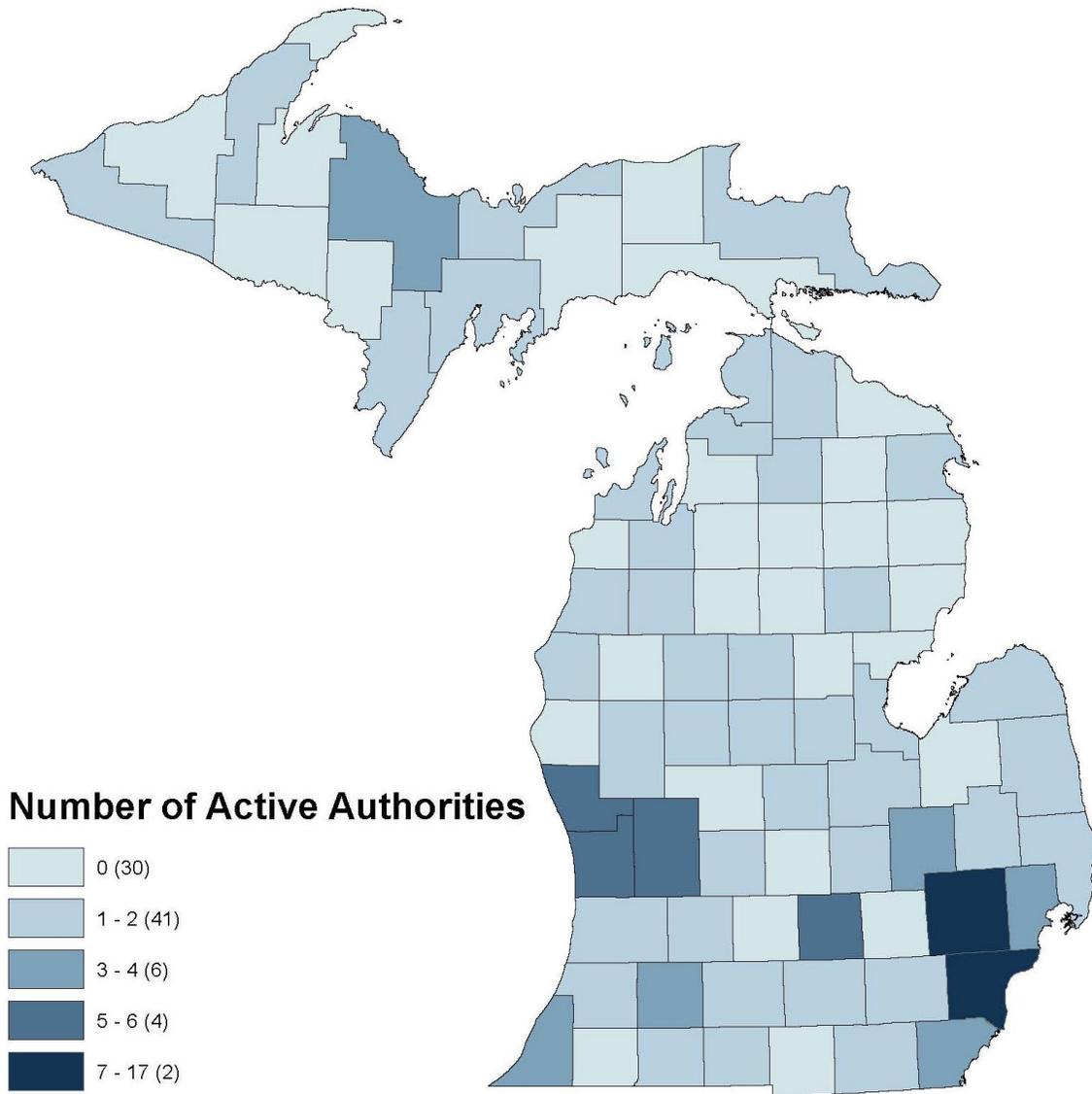


Note: The range represents the number of brownfield authorities.
The value in parentheses represents the number of counties in that range.

¹¹ "Brownfield Redevelopment Financing Act – CY 2015 Legislative Report." Michigan Strategic Fund. 12-16-16. http://www.michiganbusiness.org/cm/Files/Reports/Brownfield_TIF/2015%20Brownfield%20Redevelopment%20Financing%20Act%20Report-Final%2012-27-16.pdf?rnd=1506005047935. All data presented in this section are from this report.

Of these 295 total BRAs in Michigan, 125 collected or reimbursed tax increment revenue for the 2015 tax year. Put another way, the majority of the existing BRAs in Michigan did not collect or reimburse revenue in 2015. It is uncertain whether these authorities have never collected or reimbursed tax increment revenue, or whether they simply did not do so in 2015. [Figure 5](#) shows the location of these 125 "active" BRAs—that is, those that collected or reimbursed tax increment revenue in 2015.

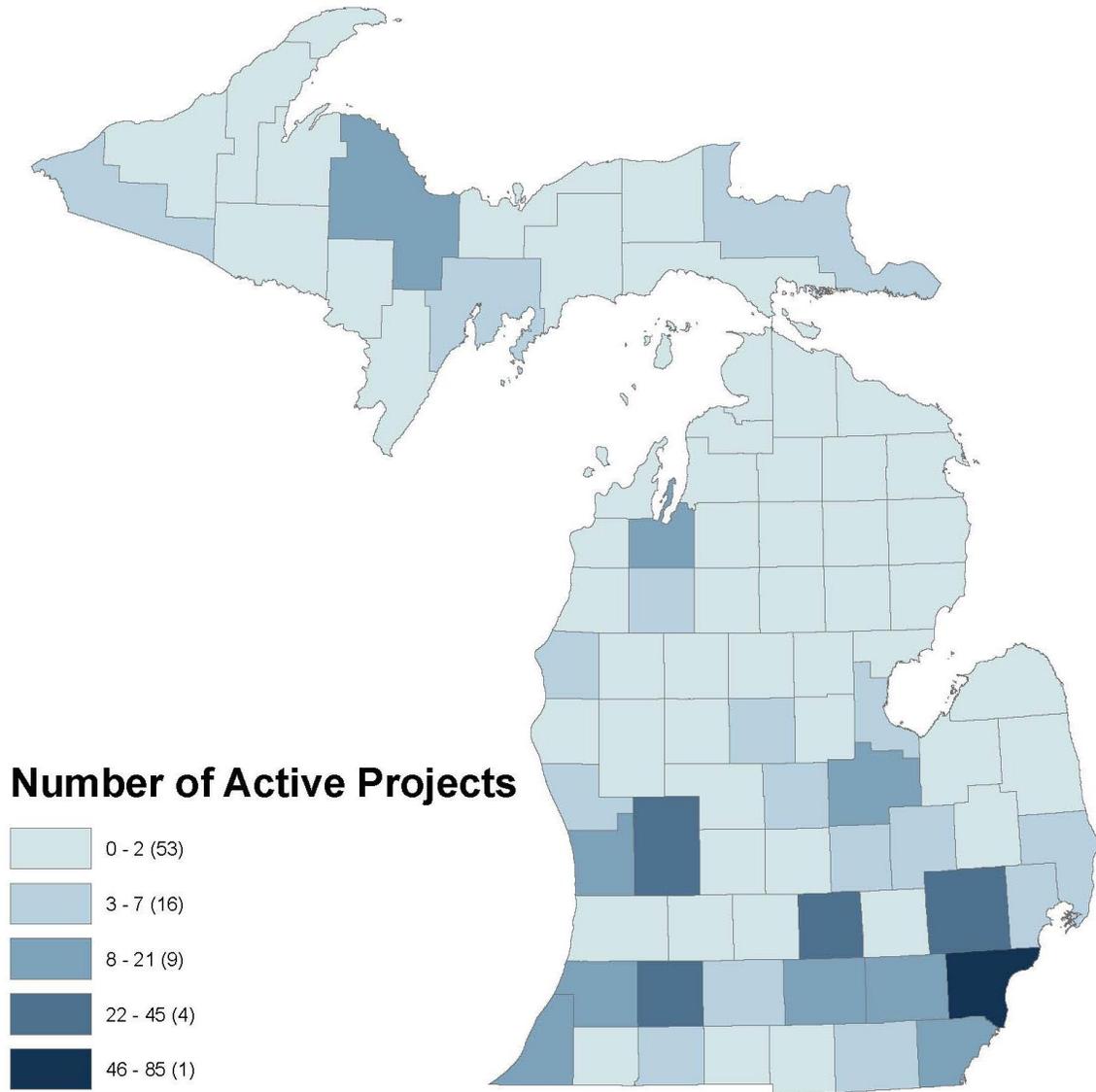
FIGURE 5 – Number of Active Authorities



Note: The range represents the number of active brownfield authorities. The value in parentheses represents the number of counties in that range.

The 125 active BRAs administer 467 local-only plans and Act 381 work plans that actively collected and/or reimbursed tax increment revenue in 2015 (so-called "active projects"). A "local-only" plan does not capture state taxes, while an "Act 381" work plan requires DEQ and/or MSF approval to capture taxes levied for school operating purposes. [Figure 6](#) shows the location of these active projects.

FIGURE 6 – Number of Active Projects

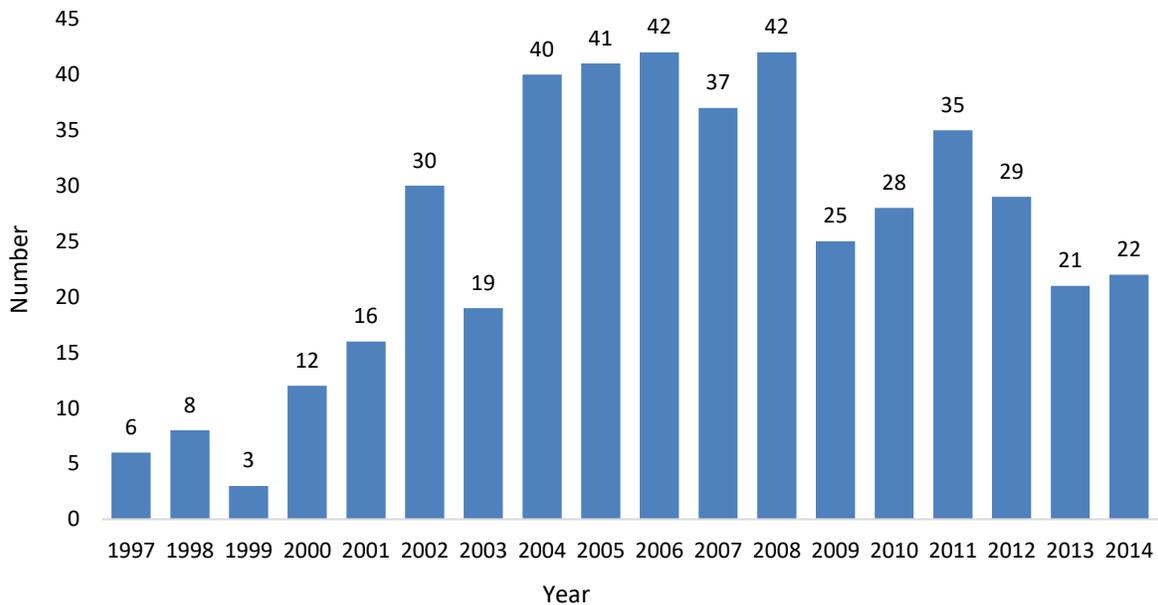


Note: The range represents the total number of active projects. The value in parentheses represents the number of counties in that range.

Five BRAs—City of Detroit, City of Grand Rapids, City of Kalamazoo, City of Lansing, and City of Benton Harbor—account for approximately 28% of all active projects in the state.

The use of brownfield TIF has changed over time. [Figure 7](#) shows the number of brownfield plan approvals, by year, through calendar year 2014, as reported to MEDC. Currently, annual new approvals are about half of their peak in 2006 and 2008.

FIGURE 7
Brownfield TIF Project Approvals, by Year



TIF legislation is built on the assumption that a redevelopment will generate an increase in taxable value and that the incremental property tax revenue will be captured by the authority and used according to the specific plan for each project. In 2015, the active authorities captured approximately \$48.9 million in tax increment revenue resulting from a \$2.0 billion cumulative increase in taxable value. Local taxes were the largest source of tax increment revenues, followed by school operating taxes, county taxes, and local intermediate school district taxes.

After collecting tax increment revenues, BRAs spend the money according to the brownfield plan. Of the state-approved plans, 37 report only environmental expenditures, 84 report only non-environmental expenditures, and 46 report both environmental and non-environmental expenditures.

Finally, BRAs are required to submit an annual financial report to the governing body of the municipality, DEQ, and MSF. BRAs may require the owner or developer of an active project to submit to the authority much of this information. In turn, DEQ and MSF are required to compile and submit a report based on this information to each member of the legislature. Additionally, DEQ and MSF are required to quarterly post online the name, location, and amount of tax increment revenues for each project approved. Finally, the act requires the auditor general to conduct a performance postaudit of the brownfield TIF program at least once every 3 years.

While the act contains these provisions for reporting and transparency, the data are ultimately self-reported by each BRA. DEQ works to validate a portion of the data, but there appear to be errors or omissions in the legislative report. The act does not prescribe any penalty in the event that a BRA does not submit data to DEQ or MSF, or submits data that may be incomplete or incorrect.

The 2015 legislative report, among other statistics, includes the amount of square feet constructed, the use of the project, the amount of actual capital investment, and the number of new jobs created. Cumulatively, over the life of all active projects, the projects report a total of \$5.01 billion in actual capital investment, with the largest square footage constructed for industrial space, followed by commercial, residential, and retail. They also report a total of approximately 26,900 new jobs created.

2017 Legislation: Transformational Brownfield Plans

2017 PA 46 (originally Senate Bill 111), which went into effect July 24, 2017, is the most recent amendment to the act. PA 46 generally follows the legislative history by introducing additional eligible activities, but for the first time introduces additional sources of tax increment revenues. These new privileges are for a time- and quantity-limited group of projects designated by the MSF as "Transformational Brownfield Plans" (TBPs).¹²

More specifically, the eligible activities for a TBP are: "any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements on eligible property, including infrastructure improvements that directly benefit eligible property."

The act allows a BRA to capture tax increment revenue not only from property taxes, but also income taxes. These new tax increment revenue sources are construction period tax capture revenues (from those physically working on and constructing the property), income tax capture revenues (from those living within the finished property), and withholding tax capture revenues (from those working within the finished property). Additionally, a transformational brownfield plan can include a certain amount of sales and use tax exemptions, as long as the purchases are made a part of the designated property.¹³

The total amount of income tax withholding under all agreements over the lifetime of the program is limited to \$800.0 million, and the total amount of sales and use tax exemptions is limited to \$200.0 million for the same time period. The exact amount of support for any project is limited to the "financing gap," the demonstrated amount needed to make the project possible, as determined through MSF analysis.

These new provisions, however, did not come without spirited public comment and discourse. According to supporters, the legislation was needed to address the most challenging sites across Michigan—those suffering from decades of pollution, blight, and abandonment—where previous redevelopment projects failed due to lack of financing. The coalition supporting the legislation

¹² "Transformational Brownfield Plan Program Guidelines". Michigan Economic Development Corporation. October 2010. <https://www.miplace.org/globalassets/media-documents/brownfield-tbp/tbp-guidelines.pdf>

¹³ Complementary bills to SB 111 amended the Income, Sales, and Use Tax Acts to implement these provisions.

included elected officials, economic developers, cities, and chambers of commerce. They posited that the bill, with increased amounts and sources of tax increment revenues, would unlock development of up to \$5.0 billion on those troubled sites.¹⁴ Without the legislation, these sites would continue to be impediments for growth, require taxpayer dollars for police and fire protection, and offer no community benefit. Moreover, the program would add to Michigan's efforts to attract investment and talent, keys to the state's continued economic recovery.

This affirmed the basic premise of tax increment programs: that in order to "prime" an area for growth and development, a municipality (or state, in the case of state income tax) gives up short-term revenue growth in order to generate long-term growth for the area. Supporters claimed that, since the income tax capture in the bill is limited to 50% of the income tax increment capture, and absent the legislation the project and the associated jobs *would not otherwise occur*, the state would immediately receive income tax revenue that *would not otherwise exist*. In addition to this limit on income tax capture, the legislation included numerous safeguards to ensure accountability and execution, including third-party analyses, certification of capital investment amounts, and monetary caps on annual capture payments. Additionally, the largest projects required approval from the state treasurer to ensure that the project would result in an overall positive fiscal impact to the state.

Opponents came to the legislation with multiple perspectives. Community activists viewed the program as nothing more than another tax "giveaway" to the rich. They wondered whether real estate developers (the bill specifically requires "mixed-use" development)—whose balance sheets appeared to be doing well—truly needed the added incentives, or whether the development would occur anyway. Regardless of motive, they felt the legislation was simply selling out cities, whose residents often face difficult living conditions, to wealthy developers with political connections. It would do nothing for residents living in the affected communities and areas. Worse, others posited, the sales and use tax exemptions could reduce revenues that support vital government functions, like education and public safety.

Representatives from free-market groups were opposed to the government interference in private redevelopment activity. If a given redevelopment project does not have the financing to be profitable, the market is saying it is not a viable project; the taxpayers should not act as the lender of last resort. They objected to the limited nature of the program, which would inherently involve government officials at the MSF "picking" winning projects in the program. This amounted, in their eyes, to another form of "crony capitalism" that obfuscated hundreds of millions of dollars in tax expenditures spent by unelected government bureaucrats.¹⁵ Moreover, if the transformational program promised growth, jobs, and redevelopment, why place limits on it at all? A better approach to economic development, they argued, is to create a broad, fair, and accommodating tax system, not special subsidies.

Concerns were also raised that the legislation would primarily benefit specific locations in the state and that it would create unexpected and potentially negative budget impacts like previous tax credit programs. The bill was amended to include a suggestion to encourage MSF to account for

¹⁴ The Michigan Thrive Initiative. <http://mithrivecoalition.com/> Accessed 9-19-17.

¹⁵ See, for example: Shikha Dalmia, "The Dark Side of Detroit's Renaissance." *The Week*. April 27, 2017 <http://theweek.com/articles/692770/dark-side-detroits-renaissance> Accessed 9-19-17.

geographic diversity in awarding projects, waive a cap on the number of projects that could be approved in the smallest population tier, limit the amount of approved projects in any given municipality, and include a sunset that would end program approvals for transformational plans on December 31, 2022, with the intent that the program would be reevaluated at that time.

The bill was signed with immediate effect on June 8, 2017.

FIGURE 8
PA 381 of 1996 – As Amended – As of December 1, 2017

"An act... to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, tax reverted, blighted, or functionally obsolete property..."

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| <p align="center"><u>Who</u></p> <ol style="list-style-type: none"> 1. Municipality establishes a brownfield redevelopment authority (BRA) and its board and hears input, per statute. 2. Authority implements a brownfield plan, per requirements. 3. Plan must be approved by BRA and local governing body. 4. Authority submits work plan or combined brownfield plan to MSF if it proposes to capture school operating taxes and use for eligible non-environmental activities or if it proposes to use TBP-only tax increment revenue. 5. Authority submits work plan or combined brownfield plan to DEQ if it proposes to capture school operating taxes and use for department specific activities. 6. DEQ and/or MSF review per statute; TBPs require additional MSF review, including, in certain instances, third-party reviews and analyses. 7. If approved, treasurers transmit revenues within 30 days of collection; authority spends per brownfield plan. | <p align="center"><u>Eligible Property</u></p> <p>Identified in a brownfield plan, and was/is used for commercial, industrial, public, or residential purposes, and is any of the following:</p> <ol style="list-style-type: none"> 1. Is in a QLGU and is a facility, site, or property (as defined in NREPA), historic resource, functionally obsolete, or blighted (and adjacent and contiguous). 2. Is not in a QLGU and is a facility, site, or property (as defined in NREPA), historic resource, functionally obsolete, or blighted (and adjacent and contiguous). 3. Is tax reverted property owned or under control of a land bank fast track authority. 4. Is a transit-oriented development or property. 5. Is in a QLGU and contains a targeted redevelopment area. 6. Is undeveloped property that was eligible in a previously approved brownfield plan that was subsequently abolished. |
| <p align="center"><u>Tax Increment Revenue Sources</u></p> <ol style="list-style-type: none"> 1. Ad valorem and specific property tax increment revenues, except those levied for debt, those already captured by TIF, and those levied under Art Institute Authorities Act and Zoo Authorities Act. 2. MSF and/or DEQ approval required to capture taxes levied for school operating purposes. 3. For TBP only, can capture 100% of income tax generated by site construction workers and 50% of income tax generated by workers and dwellers in the finished site (total \$200.0 million cap on construction capture [less any sales/use tax exemptions] and \$800.0 million on income tax capture). | <p align="center"><u>Eligible Activities</u></p> <p><u>For all eligible properties:</u></p> <ol style="list-style-type: none"> 1. Department specific activities: generally speaking, these are DEQ activities that largely mimic the three original "eligible activities," and include 8 additional environmentally related activities. 2. Relocation of public buildings or operations for economic development purposes. 3. Costs of environmental insurance. 4. Costs to develop and prepare brownfield and/or work plans. 5. Costs of brownfield and/or work plan implementation. 6. Demolition of structures. 7. Lead, asbestos, or mold abatement. 8. Repayment of principal and interest on any obligation issued by authority. <p><u>For eligible property that is in a QLGU or economic opportunity zone or that is a former mill:</u></p> <ol style="list-style-type: none"> 1. All of the above, PLUS 2. Infrastructure improvements that benefit eligible property. 3. Site preparation. <p><u>For eligible property that is owned or under control of a land bank, or QLGU or authority:</u></p> <ol style="list-style-type: none"> 1. All of the above, PLUS 2. Assistance to a land bank in title work, or selling or conveying or acquiring property if for economic development purposes. 3. Assistance to a QLGU in title work, or selling or conveying or acquiring property if for economic development purposes. <p><u>For eligible property included in a TBP:</u></p> <ol style="list-style-type: none"> 1. Any demolition, construction, restoration, alteration, renovation, or improvement of buildings or site improvements, including infrastructure improvements. |

PA 381: Future Considerations

2017 PA 46 is the latest amendment to Michigan's Brownfield Redevelopment Financing Act. From its inception in 1996, with a focus on environmental remediation, the law has been adapted to become one of the primary tools to promote economic development across the state. But this evolution has not come without concern for the program's fundamental privilege: that it allows an authority to capture property tax revenue, which would otherwise accrue to taxing jurisdictions like libraries, community colleges, and intermediate school districts, to use on specific redevelopment projects that are approved by one municipality's governing body.

In fact, a series of public acts enacted into law in late 2016 (PAs 505-510) opened up just this issue: it allowed libraries to exempt their mills from capture in certain tax increment finance programs. The package, however, did not amend PA 381.¹⁶ And this was not the first public act that sought to limit tax increment finance capture. In 2013, after public debate, a law was passed to specifically exempt taxes levied under the Zoological Authorities Act (currently, a tri-county millage supporting the Detroit Zoo) and the Art Institute Authorities Act (a tri-county millage supporting the Detroit Institute of Arts) from capture. These recent public acts hint at the tension inherent in tax increment finance programs: the competition for tax dollars among the providers of public goods and services.

The Michigan Economic Development Corporation expects transformational brownfield plans to arrive in early 2018, as economic development professionals, municipal leaders, and Michigan citizens begin the application and approval process.¹⁷ It remains to be seen whether the recently enacted transformational program will close to new applications in 2022, or whether legislators and the public may be crafting the next iteration of brownfield redevelopment in the coming years.

¹⁶ The public acts amended, respectively, the Tax Increment Finance Authority Act, the Downtown Development Authority Act, the Corridor Improvement Authority Act, the Water Resources Improvement Tax Increment Finance Authority Act, the Local Development Financing Act, and the Historical Neighborhood Tax Increment Finance Authority Act.

¹⁷ VanHulle, Lindsay. "Developers, including Gilbert, start inquiring about new brownfield incentive." Crain's Business Detroit. August 16, 2017. <http://www.crainsdetroit.com/article/20170816/news/636461/developers-including-gilbert-start-inquiring-about-new-brownfield>

APPENDICES

APPENDIX I

Act Amendments

2000 (PA 145) Major Update –

Introduced a **qualified local governmental unit** (QLGU, or "core community," defined in companion legislation as a group of specific municipalities meeting population, income, and location requirements) and gave BRAs in these units the ability to use **functionally obsolete** and **blighted** property as eligible property; and gave them **infrastructure improvements, demolition of structures, lead or asbestos abatement, and site preparation** as additional eligible activities.¹⁸ Added as an eligible activity for all units the relocation of public buildings or operations for economic development purposes. Revised local government brownfield plan approval timeline and required a public hearing and notice before approval. Introduced **Michigan Economic Growth Authority** (MEGA) role in accepting, reviewing, and approving work plans proposing to capture school operating taxes for the expanded set of activities (similar to existing DEQ review process for environmental activities); required a development agreement between municipality and developer for these projects. Extended school tax capture approval deadline (now DEQ and MEGA) to **January 1, 2003**. Allowed BRAs to reimburse themselves, up to \$75,000, from captured local taxes for certain environmental costs prior to brownfield plan approval. Eliminated requirement that an authority only apply to predesignated zones.

2002 (PAs 254, 413, and 727) –

Revised specific taxes to include a specific tax that was omitted (PA 254). Updated references to the Revised Municipal Finance Act (PA 413). Extended school tax capture approval deadline to **January 1, 2008**. Required signed affidavit by assessor stating qualification for designation of **functionally obsolete**. Implemented criteria for MEGA to consider in reviewing work plans, and altered the MEGA response process (PA 727).

2003 (PAs 259, 277, and 283) –

Added all tax reverted property owned or under control of a **land bank fast track authority** to eligible property and gave all eligible activities to this property; added assistance to a land bank as an eligible activity for this property (school operating taxes could not be used for this new activity). Allowed a BRA to reimburse advances made by any person, municipality, or land bank for costs of eligible activities. [Revised title of the act to note the redevelopment and reuse of property,

¹⁸ According to House Legislative Analysis, there were 88 "qualified local governmental units" at the time (81 cities, 6 townships, and 1 village). "Brownfield Redevelopment." 7-10-00, <http://www.legislature.mi.gov/documents/1999-2000/billanalysis/House/pdf/1999-HLA-4400-D.pdf>. Currently, the Michigan Economic Development Corporation recognizes 144 qualifying communities. For a full list, see "Core Communities." April 2016. http://www.michiganbusiness.org/cm/files/Fact-Sheets/Core_communities.pdf

including tax reverted, blighted, or functionally obsolete property.] (PA 259) Revised initial taxable value to allow for the next tax assessment (PA 277). Provided a specific exemption for the use of school operating taxes to benefit a polluter (PA 283).

2005 (PA 101) –

Added QLGU-eligible activities to activities that occur on a **qualified facility** and defined qualified facility as a specific type of landfill (whether or not located in a QLGU). Jurisdictions could opt out of capture for a plan with this property, and taxes levied for school operating purposes could not be used for this property. Allowed BRA to reimburse advances with or without interest.

2006 (PAs 32 and 467) –

Added QLGU-eligible activities to activities that occur in an **economic opportunity zone** and defined economic opportunity zone as a specific location in Michigan. Taxes levied for school operating purposes could not be used for this property (PA 32). Required a brownfield plan to include a beginning date of capture, no later than 5 years after the resolution approving the plan (PA 467).

2007 (PAs 201, 202, 203, and 204) Major Update –

Waived DEQ approval requirement to use school operating taxes for certain environmental activities; revised DEQ review process of a work plan. Extended school tax capture approval deadline to **January 1, 2013**. Set duration of brownfield plan to no longer than 35 years after the resolution approving the plan; could amend beginning date of capture under certain circumstances. Revised local government brownfield plan approval timeline and notification requirements. Revised limits, and created a tiered schedule, for the amounts a BRA could use for administrative expenses and expenses for work conducted prior to plan approval. Required Auditor General audit of brownfield program every three years. Gave **non-QLGU** BRAs the ability to use **functionally obsolete** and **blighted property** as eligible property; and gave them **demolition of structures** and **lead or asbestos abatement** as additional eligible activities. Gave QLGU-eligible activities to a certain former mill and non-QLGU eligible activities to a certain site above the 45th Parallel. Added costs of developing plans to eligible activity.

2008 (PA 154) –

Instituted application process and reimbursement mechanism for revenue lost from captured school operating taxes as a result of replacing the Single Business Tax with the Michigan Business Tax.

2010 (PAs 241, 246, and 288) –

Added **transit-oriented development** and **transit-oriented facility** to eligible property (PA 241). Added assistance to a **QLGU** for specific land bank type activities as an additional activity for eligible property that is in a **QLGU** (PA 246). Set maximum plan duration to 30 years, measured from when capture begins; could be amended, but not beyond 5 years from when the plan was adopted (PA 288).

2012 (PA 502) Major Update –

Added **historic resource** and **targeted redevelopment area** to eligible property. Defined targeted redevelopment area as a locally designated area requiring **Michigan Strategic Fund (MSF)** approval. Replaced MEGA responsibilities with **MSF**; allowed creation of a combined brownfield plan (a brownfield plan that also included information required by MSF and/or DEQ). Created **State Brownfield Redevelopment Fund** and identified revenue source: an amount equal to 3 mills of the state education tax (SET), up to 25 years, for all plans that authorized capture of school operating taxes and were approved after January 1, 2013. Allowed use of local tax increment revenues for BRA operating expenses and for expenses incurred before plan approval; allowed use of school tax increment revenues for various activities before plan approval, as long as the activities were subsequently included in an approved brownfield plan. Required MSF and DEQ to provide online updates of approved projects. **Removed school tax capture approval deadline entirely**. Allowed MSF chairperson to approve a plan if it proposed to capture \$500,000 or less.

2013 (PA 67) –

Excluded from capture taxes levied under the **Zoological Authorities Act** and **Art Institute Authorities Act**.

2014 (PAs 20 and 244) –

Provided a one-time filing deadline extension for reimbursement mechanism (see **2008**). Allowed an elected official to serve on a BRA board and matched the dates of service as a public official.

2016 (PA 471) –

Introduced **department specific activities** and defined as environmental (DEQ) activities. Revised eligible activity definition to create tiered system based on status of eligible property. Added leaking underground storage tanks to eligible property. Revised initial taxable value and allowed it to be lowered. Revised deposits into a **local brownfield revolving fund**. Allowed a BRA to expend from a local brownfield revolving fund without approval from municipality. Allowed local tax capture to be used for more operating expenses; allowed school tax capture to be used for environmental surveys. Updated process for terminating a brownfield plan. Allowed MSF chairperson to approve a plan if it proposed to capture \$1,000,000 or less.

2017 (PA 46) Major Update –

Introduced **transformational brownfield plan**, consisting of a limited number of select plans that could access new sources of income tax capture, as well as sales and use tax exemptions, for new eligible activities for mixed-use developments. Created application process and MSF requirements in reviewing plans, with monetary caps and a program deadline of **December 31, 2022**.

APPENDIX II

Section Guide to PA 381 — As Amended — As of December 1, 2017

| Section (MCL) | Contents | Notes |
|-----------------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 1 (125.2651) | Short title: "brownfield redevelopment financing act" | Has never been amended |
| 2 (125.2652) | Definitions | |
| 3 (125.2653) | BRA establishment, exercise of powers, public body corporate | |
| 4 (125.2654) | Creation of BRA by governing body, requirement of public hearing, adoption of resolution | |
| 5 (125.2655) | BRA board membership, adoption of rules, open meetings and financial records | |
| 6 (125.2656) | BRA employment and compensation of director, treasurer, secretary, other personnel and assistance <i>[permissive]</i> | Has never been amended |
| 7 (125.2657) | Powers of BRA (14 enumerated powers), requirement to determine captured taxable value, transfer of funds from a municipality | |
| 8 (125.2658) | Creation of local brownfield revolving fund, fund sources, use of fund | |
| 8a (125.2658a) | Creation of state brownfield redevelopment fund, fund sources, use of fund | Added by 2012 PA 502 |
| 9 (125.2659) | BRA as instrumentality of political subdivision | Has never been amended |
| 10 (125.2660) | Taking, transfer, and use of private property | Has never been amended |
| 11 (125.2661) | Financing sources (8 enumerated sources) | |
| 12 (125.2662) | Bonds and notes of authority | |
| 13 (125.2663) | Requirements of brownfield plan (13 enumerated requirements), use of TIR, duration of capture | |
| 13a (125.2663a) | Cost recovery action from responsible party | Added by 2016 PA 471 (largely rewrote pre-existing language in sec. 13) |

[continued on next page]

Section Guide to PA 381 — As Amended — As of December 1, 2017 cont.

| Section (MCL) | Contents | Notes |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 13b (125.2663b) | Use of TIR, use of taxes levied for school operating purposes, MSF and/or DEQ approval requirements, allowable admin/operating costs, exceptions for TIR use limitations, payment to state brownfield fund | Added by 2016 PA 471 (largely rewrote pre-existing language in sec. 13) |
| 13c (125.2663c) | Transformational brownfield plan (TBP), authorized use of additional tax capture, requirements for TBP (4 additional enumerated requirements), MSF approval, deposit into state brownfield fund | Added by 2017 PA 46 |
| 14 (125.2664) | Brownfield plan public hearing, notification to taxing jurisdictions, governing body approval, abolishment of plan | |
| 14a (125.2664a) | TBP governing body approval; MSF requirements for TBP review; actual capital investment and clawback; investment and TBP cap waivers; TBP cap, sunset, and monetary limit | Added by 2017 PA 46 |
| 15 (125.2665) | DEQ/MSF review and approval process, combined brownfield plan | |
| 15a (125.2665a) | Reimbursement mechanism for lost revenue from taxes levied for school operating purposes | Added by 2008 PA 154 |
| 16 (125.2666) | TIR transmission to authority, BRA reporting requirements, MSF reporting requirements, TBP transfer to state brownfield fund | |
| 17 (125.2667) | Authorization, issuance, and sale of tax increment bonds and notes | |
| 18 (125.2668) | BRA operating budget | Has never been amended |
| 19 (125.2669) | BRA dissolution | |
| 20 (125.2670) | State tax commission may compel enforcement of act | Has never been amended |
| 21 (125.2671) | No capture of TIR from taxes levied before December 31, 1996 | Repealed by 2016 PA 471 |
| 22 (125.2672) | Conditional effective date, tie-bar | Repealed by 2016 PA 471 |



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